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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,494	04/20/2004	Troy M. Walters	5490-000373	5234
27572	7590	02/26/2008		
HARNESS, DICKEY & PIERCE, P.L.C.				
P.O. BOX 828				
BLOOMFIELD HILLS, MI 48303				
EXAMINER				
ARAJ, MICHAEL J				
ART UNIT		PAPER NUMBER		
3733				
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02/26/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/828,494

**Applicant(s)**

WALTERS ET AL.

**Examiner**

MICHAEL J. ARAJ

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-25 and 28-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Harari et al. (U.S. Patent No. 6,328,744).

Hariri et al. disclose a method of forming a non-linear tunnel through a bone structure comprising interconnecting a flexibly drill shaft and a drill head; forming a small incision in a tissue near the bone structure; passing a drill head with the flexible drill shaft percutaneously through the small incision; drilling into the bone structure with the drill head; guiding the drill head with the flexible drill shaft with a guide mechanism along a selected non-linear cutting path; forming the selected non-linear cutting path between an entering position and an exiting position spaced a distance from the entering position in the bone structure; providing a suture near the exiting position; moving the drill head and the flexible drill shaft; engaging the suture with a suture mechanism near the drill head; and pulling the suture from the exiting position to the entering position with the suture mechanism. The guide mechanism includes a flexible rod at least partially enclosing at least a portion of the flexible drill shaft and having a proximal end and a distal end where the flexible drill shaft is coupled to the flexible rod at the proximal end. The flexible member is interconnected with a distal end of the flexible drill shaft.

Sliding of a handle to tension the flexible member moves the flexible member to engage the drill head (see Figures 17A-17D).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harari et al. (U.S. Patent No. 6,328,744).

Harari et al. disclose the claimed invention except for the shaft or flexible rod being made of a memory shape alloy. It would have been obvious to one having ordinary skill in the art at the time the invention was made the devices of a memory shape alloy, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harari et al. (U.S. Patent No. 6,328,744) in view of Moore et al. (U.S. Patent No. 4,872,451).

Harari et al. disclose the claimed invention except for positioning of an arthroscope. Moore et al. disclose the use of an arthroscope for visualization of a selected region (Col. 3, Paragraph 6). It would have been obvious to one skilled in the

art at the time the invention was made to have the method of Harari et al. with the use of an arthroscope in view of Moore et al., in order to better visualize the procedure.

Claims 36-41 and 43-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harari et al. (U.S. Patent No. 6,328,744) further in view of Hyde (U.S. Publication No. 2002/0095214).

Harari discloses the claimed invention except for being used on a humeral head. Hyde discloses forming a nonlinear tunnel through the head of the humerus (Fig. 2D) wherein the entry position is near at least one of a lateral side of the humerus, a superior side of the humeral head, or combinations thereof; and the exit position is at least one of the other of the lateral side of the humerus, the superior side of the humeral head, or combinations thereof. The path shown by Hyde can be performed by the device of Harari et al., for quicker treatment of the joint. It would have been obvious to one skilled in the art at the time the invention was made to have used the device of Harari et al. on a humerus as taught by Hyde in order to reduce the amount of steps needed for this surgery.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harari et al. (U.S. Patent No. 6,328,744) in view of Hyde (U.S. Publication No. 2002/0095214) and further in view of Moore et al. (U.S. Patent No. 4,872,451).

The combination of Harari et al. and Hyde discloses the claimed invention except for positioning of an arthroscope. Moore et al. disclose the use of an arthroscope for visualization of a selected region (Col. 3, Paragraph 6). It would have been obvious to one skilled in the art at the time the invention was made to have the method of Harari et

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al. and Hyde with the use of an arthroscope in view of Moore et al., in order to better visualize the procedure.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. ARAJ whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Aranj/

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733